

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

LUVEN WHITEHORSE,

Petitioner,

vs.

UNITED STATES OF AMERICA

Respondent.

ORDER

FILED IN UNITED STATES DISTRICT COURT, DISTRICT OF UTAH
OCT - 1 2010
BY D. MARK JONES, CLERK
DEPUTY CLERK

Case No. 2:03-CR-306

This court sentenced the petitioner, Luven Whitehorse, to 188 months incarceration for aggravated sexual abuse of a minor while within Indian country. Judgment was entered the same day. Mr. Whitehorse did not appeal this sentence but sought to set it aside pursuant to 28 U.S.C. § 2255. The defendant filed multiple § 2255 motions and each motion was denied. Mr. Whitehorse remains in the custody of the Bureau of Prisons.

Mr. Whitehorse now petitions the court for a writ of audita querella and a writ of error coram nobis. The court ordered the United States to respond to the petitioner's petition, and the government did so on September 7, 2010. The court, after reviewing the arguments presented by both parties, adopts the Respondent's arguments.

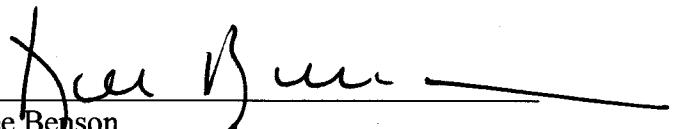
The court concludes that the petitioner is not entitled to a writ of coram nobis because he is currently in custody. *See United States v. Torres*, 282 F.3d 1241, 1245 (10th Cir. 2002). The

petitioner is also not entitled to a writ of audita querela because the error he asserts—ineffective assistance of counsel—could have been remedied with a motion to vacate under 28 U.S.C. § 2255. Contrary to the petitioner’s argument, the “fact that [he was] precluded from filing a second 2255 petition does not establish that the remedy in §2255 is inadequate.” *Carvalho v. Pugh*, 177 F.3d 1177, 1179 (10th Cir. 1999); *see also United States v. Harris*, No. 10-5058, 2010 WL 3274503 * 3 (10th Cir. Aug. 19, 2010). Accordingly, the petitioner’s petition is DENIED.

IT IS SO ORDERED.

DATED this 30th day of September, 2010.

BY THE COURT



Dee Benson
United States District Court Judge